STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

IN THE ORIGINAL JURISDICTION

MIKAL D. MAHDI,
Petitioner,

v.

BRYAN P. STIRLING, Commissioner,
South Carolina Department of Corrections
Respondent.

PETITION FOR A WRIT OF HABEAS CORPUS

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INTRODUCTION

The judge who sentenced Mikal Mahdi to death said that he tried "to temper justice with mercy and to seek to find the humanity in every defendant that I sentence. That sense of humanity seems not to exist in Mikal Deen Mahdi." (2025APP 521.)[1] Yet the major reason the judge reached this conclusion was that the evidence of Mahdi's humanity was simply not presented.

Much of it was available, but Mahdi's trial lawyers were inexperienced, having handled only a single death penalty case before this one. This inexperience led trial counsel to abandon their investigation after concluding that Mahdi's family members would not be helpful. Counsel failed to discover a group of elementary school teachers and community members—including a former sheriff who testified for the State at trial—who were willing to speak out on Mahdi's behalf. At the trial itself, they put on a "blink and you'll miss it" defense to the death penalty, presenting just a single witness and less than 30 minutes' worth of testimony that barely scratched the surface of Mahdi's tumultuous childhood and teenage years.

As a result, the sentencing judge was not given critical information about Mahdi's upbringing. For example, when Mahdi's mother fled her husband's abuse when Mahdi was only four years old, Mahdi was told by his father that his mother abandoned the family, and then that she was dead. By age eight, Mahdi witnessed his father kidnap his mother at gunpoint and attempt to kill her. Around age ten, Mahdi's teachers tried to get him additional support for his depression and behavioral issues. Instead of allowing his son to get the help he needed, Mahdi's

[1] The citations throughout this habeas petition to 2025APP __ refer to the Appendix filed alongside the petition. The majority of the documents in the 2025APP can also be found in the Appendix filed with the Court on January 21, 2015, in *Mahdi v. State,* Appellate Case No. 2014-002131. Those documents are re-attached in a new appendix for the Court's convenience.

father pulled him from school and subjected him to daily survivalist training. Mahdi would never return to school. By 14, he entered the juvenile justice system, where he endured hundreds of hours of solitary confinement, often for minor infractions like refusing to do physical training. The trial judge was not told about any of this before sentencing Mahdi to death. It would only come to light at the 2011 state post-conviction hearing.

Years later, even more evidence would become available, showing how Mahdi's life was knocked off course by his traumatic childhood. Scientific research in the fields of Adverse Childhood Experiences, the harm inflicted by solitary confinement, intergenerational trauma, unconscious bias in prison settings, and adolescent brain development, demonstrates how Mahdi's prospects for healthy development were completely derailed. This is new information that was unknown at the time of Mahdi's trial and did not even emerge until after his state post-conviction hearing in 2011. It has never been considered by any court.

None of this information is intended to minimize the harm that Mahdi caused through his violent acts as a 21-year-old. But with such a criminal record, one might expect that Mikal Mahdi was out of control his entire life. The opposite is true. Teachers and family members recall a boy who was quiet, affectionate, thoughtful, creative, and intelligent. The question is, what changed? Was it something inherently horrible that finally revealed itself in Mahdi's teens and early 20s? Or was it the years Mahdi spent in an abusive household as a little boy, leading to more years being raised by an unstable and mentally ill father, leading to yet more years as a teenager in harsh prisons where he was locked away in solitary confinement for days and weeks on end? It's not particularly surprising that a child who went through this ordeal would fall into such a deep well of depression and anger, with tragic consequences.

The Court should exercise its original jurisdiction by staying Mikal Mahdi's execution so it can conduct a full and deliberate review of two questions:

1. Did Mikal Mahdi's trial attorneys deprive him of the effective assistance of counsel when they prematurely gave up on their investigation, resulting in a presentation of mitigating evidence that spanned only 15 transcript pages, was over in less than 30 minutes, and omitted critical witnesses and information about Mahdi's tumultuous childhood?

2. Should Mikal Mahdi's death sentence be reevaluated in light of newly available scientific, medical, and psychological research that clarifies the scale of crippling trauma he endured as a child and teenager?

FACTS AND PROCEDURAL HISTORY

Events Leading to the Capital Prosecution[2]

In July 2004, at 21 years old, Mikal Mahdi stole a gun and car, and fled his home in Lawrenceville, Virginia, because of his involvement in the death of a drug dealer. Mahdi was planning to go to Florida. On July 15, the day after he left Virginia, Mahdi attempted to rob a convenience store in Winston-Salem, North Carolina, but failed when he couldn't get the store's cash register open. In the process, Mahdi shot the store clerk, Christopher Boggs, twice, killing him.[3]

On July 17 in Columbia, South Carolina, Mahdi car-jacked Corey Pitts at gunpoint. Shortly afterwards, in Calhoun County, gas station clerks called the police when they noticed Mahdi trying and failing to buy gas with a credit card he couldn't get to work. As the police arrived, Mahdi fled into the woods near the gas station. Mahdi made it on foot to a farm about a half-mile from the station. There, Mahdi came upon a work shed, broke into it, and stayed there for the rest of the day. The next day, the owner of the farm, Orangeburg Public Safety Captain James Myers, came by after returning home from vacation. When Mahdi and Myers came across one another, Mahdi shot him nine times with a rifle that was in Myers' work shed. After Myers was dead, Mahdi poured fuel on him and set his body on fire. Mahdi then stole Myers' truck, a license plate, and several guns. When Captain Myers didn't come home that evening, his wife, who was also a law enforcement officer, went looking for him and eventually found his body.

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[2] The facts recounted here are a summary of the PCR court's description of the capital crimes, found at 2025APP 1330-1334.

[3] Mahdi pled guilty to the first-degree murder of Mr. Boggs and was sentenced to life imprisonment without parole in North Carolina. *See Mahdi v. Stirling*, No. 8:16-3911-TMC, 2018 WL 4566565, at *1, n.1 (D.S.C. Sept. 24, 2018).

By July 21, Mahdi made it to Satellite Beach, Florida. A nationwide alert had been issued for his arrest. Police spotted Mahdi in Myers' truck and attempted to pull him over. While it was still moving, Mahdi jumped out of the truck and fled, carrying Myers' assault rifle. Mahdi dropped the rifle during the foot pursuit, and was eventually found and arrested in a nearby condo complex. According to the arresting officer, Mahdi said he would have shot the officer had his gun not jammed.

These crimes were horrible and reprehensible. Yet the obvious trail of evidence Mahdi left behind says something important about the person who committed them. During the North Carolina murder, Mahdi didn't bother to conceal his identity, which was plainly documented through surveillance video and fingerprints. In South Carolina, Mahdi committed the car-jacking, again with no attempt to conceal his identity. He then called attention to himself by spending substantial time trying to use a canceled credit card at the gas station. Mahdi lingered for over a day in Captain Myers' shed, allowing himself to be discovered. When fleeing Myers' murder, Mahdi made no attempt to clean up the shell casings and fired bullets, and left behind Myers' body in plain view. When he was arrested in Florida several days later, Mahdi was still driving Myers' truck out in the open, and was still carrying Myers' guns and an atlas from his shed.

These actions were tragic. They also show that Mahdi was a reckless, hopeless, 21-year-old. He had little regard for the lives of others at that point in his life, but he also had no regard for his own. Mahdi, who struggled virtually his entire life with suicidal feelings, had completely given up on himself. The story of his upbringing, hinted at during the trial, and more fully explained during the PCR hearing, provides the explanation why.

Procedural History

Following the capital crime in Calhoun County in 2004, Mahdi went to trial in November 2006 before The Honorable Clifton Newman. After jury selection concluded, Mahdi pled guilty and, as required by state law following a guilty plea, proceeded to a sentencing hearing without a jury. After more than two days' worth of evidence and testimony, and 28 witnesses presented by the State, trial counsel presented their evidence. The sum total of the defense evidence was two witnesses and less than 30 transcript pages of testimony (excluding the experts' descriptions of their qualifications). Only one of the two witnesses addressed Mahdi's life experiences, and did so in the span of merely 15 transcript pages of testimony. Following the close of evidence, Judge Newman issued a written sentencing decision that he announced in open court. (2025APP 508-523.)

The record that trial counsel generated was so meager that only a single issue was raised on direct appeal. That issue was based on a single sentence in Judge Newman's sentencing order. Then, at oral argument, Mahdi's counsel conceded there had been no objection at trial, so the issue was not preserved for review. *Mahdi v. State*, 383 S.C. 135, 138, 678 S.E.2d 807, 808 (2009). Thus, the virtually nonexistent defense presented at trial resulted in a functionally nonexistent review on direct appeal, as nothing was raised for the Court to consider.

The defense presentation was more robust at the state PCR stage. Mahdi's counsel raised a claim that trial counsel failed to adequately develop and present mitigation evidence concerning Mahdi's background. An evidentiary hearing was held in March 2011, and the PCR court heard testimony from four of Mahdi's family members, several teachers and community members familiar with Mahdi and his family, as well as four mental health experts. The PCR judge initially ruled that trial counsel were deficient, in part because they failed to interview a

host of witnesses to Mahdi's upbringing who were outside of his family. (2025APP 1285.) However, after the State sought reconsideration, the PCR judge denied relief, finding both that counsel's performance was not deficient and that even if counsel was deficient, there was no reasonable probability of a different sentencing result in light of the aggravating evidence. (2025APP 1325-1457.) This Court and the U.S. Supreme Court denied certiorari review. *Mahdi v. State*, Appellate Case No. 2014-002131 (order denying certiorari review, issued Sept. 8, 2016); *Mahdi v. South Carolina*, No. 16-741, 580 U.S. 116 (2017) (U.S. Supreme Court order denying certiorari review, issued Feb. 21, 2017).

Mahdi next proceeded into federal habeas corpus review, where the federal district court denied his petition without an evidentiary hearing. *Mahdi v. Stirling*, No. 8:16-3911-TMC, 2018 WL 4566565 (D.S.C. Sept. 24, 2018).[4] On appeal, the Fourth Circuit affirmed the district court's denial of the habeas petition. Chief Judge Gregory dissented, and would have reversed on the ground that the district court erroneously denied funding for an expert to evaluate race-based trauma in Mahdi's background and family history, and also on the ground that the district court should have addressed a claim that trial counsel were ineffective for failing to uncover and present evidence of childhood abuse. *Mahdi v. Stirling*, 20 F.4th 846 (4th Cir. 2021).

Chief Judge Gregory reached two important factual conclusions. First, he found that Mahdi lived through "profound and chronic trauma that is about as extreme as any child can experience." *Id.* at 920 n.14 (Gregory, J., dissenting) (citation omitted). Second, Chief Judge Gregory found that the meager showing at trial was due at least in part to the inappropriate

[4] Also, during the pendency of the federal habeas petition, Mahdi filed a second PCR action, which the PCR court dismissed as procedurally barred, and this Court declined to grant review. *See Mahdi v. State*, No. 2017-CP-09-00004 (order of dismissal filed July 6, 2017); Appellate Case No. 2017-002212 (order dismissing appeal issued on Apr. 19, 2018).

behavior of Mahdi's trial attorneys: "it is difficult to imagine counsel showing more disrespect for a former client's family (and most likely source of mitigation evidence) than trial counsel demonstrated at Mahdi's state postconviction hearing." For example, Chief Judge Gregory noted that the trial lawyers labeled Mahdi's family as "dysfunctional" and belittled them by saying "there are many Black families like that." *Id.* at 919.

Nonetheless, the two other judges on the Fourth Circuit panel affirmed the denial of the habeas petition and the U.S. Supreme Court denied review. *Mahdi v. Stirling*, No. 22-5536, 143 S. Ct. 582 (2023).

In February 2023, this Court entered an order staying the issuance of a notice of execution for Mahdi in light of the pendency of *Owens v. Stirling*, 443 S.C. 246, 904 S.E.2d 580 (2024), which involved the constitutionality of South Carolina's execution methods. *See Mahdi v. State,* Appellate Case No. 2014-002131 (stay order issued Feb. 9, 2023). After *Owens* was decided in August 2024 and approved the execution methods, the Court issued an order identifying Mahdi as eligible to receive a notice of execution. *See Moore, Sigmon, Owens, Mahdi, and Bowman v. State,* Appellate Case No. 2024-003173 (order issued Aug. 30, 2024).

On March 14, 2025, the Clerk of this Court issued a notice of execution for Mahdi, setting the date for his execution as April 11, 2025.

JURISDICTION AND STANDARD OF REVIEW

Habeas corpus relief is available in this Court's original jurisdiction under the South Carolina Constitution. S.C. Const. art. I, § 18 & art. V, § 5; *see also* S.C. Code § 14-3-310 (1976). "Notwithstanding the exhaustion of appellate review, including all direct appeals and PCR, habeas corpus relief remains available to prisoners in South Carolina." *Moore v. Stirling*, 436 S.C. 207, 218, 871 S.E.2d 423, 429 (2022) (quoting *Williams v. Ozmint*, 380 S.C. 473, 477,

671 S.E.2d 600, 602 (2008)). Habeas relief is appropriate when other potential avenues of relief have been exhausted, there is a constitutional violation, and "the denial of fundamental fairness which, in the setting, is shocking to the universal sense of justice." *Moore*, 436 S.C. at 219, 871 S.E.2d at 429; *see also Tucker v. Catoe*, 346 S.C. 483, 552 S.E.2d 712 (2001); *Slack v. State*, 311 S.C. 415, 429 S.E.2d 801 (1993); *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990). As this Court recognized in *State v. Torrence*, 305 S.C. 45, 69, 406 S.E.2d 315, 328 (1991), the Court's original jurisdiction gives it the "ability to provide relief to those who have, for whatever reason, been utterly failed by our criminal justice system."

When fundamental fairness and equity demand a remedy, this Court has set aside procedural obstacles and proceeded directly to the merits. In *Butler*, this Court concluded that the petitioner had "delay[ed] in calling this grave constitutional error to [its] attention," but nevertheless granted relief because of the "unique and compelling circumstances" presented where the petitioner was seeking relief under constitutional principles recognized after his trial, appeal, and exhaustion of state post-conviction relief proceedings. 302 S.C. at 468, 397 S.E.2d at 88. In *Tucker*, the Court granted review of a statutory claim that had never previously been presented, and granted relief on a constitutional claim that had been found procedurally defaulted on direct appeal and was later the subject of an unsuccessful post-conviction claim. 346 S.C. at 489, 552 S.E.2d at 715. Accordingly, unlike PCR or federal habeas review, the Court here has discretion to bypass issues that could be considered procedural barriers in the normal course of direct appeals or post-conviction proceedings in order to correct injustices.

The Court has also exercised discretion to reach non-constitutional issues raised in an original jurisdiction posture. *Johnson v. Catoe*, 345 S.C. 389, 393, 548 S.E.2d 587, 589 (2001) (granting a stay of execution and appointing a referee to take evidence on an issue of after-

discovered evidence involving a witness recantation); *Tucker*, 346 S.C. at 490, 552 S.E.2d at 715-16 (declining to grant relief, but conducting merits review of a statutory violation claim); *State v. South*, 310 S.C. 504, 505-06, 427 S.E.2d 666, 668 (1993) (after the conclusion of state post-conviction review, granting South's motion for leave to seek a new trial on after-discovered evidence and remanding for a hearing in the circuit court).

REASONS THE WRIT SHOULD BE GRANTED

I. Mikal Mahdi's trial counsel presented no meaningful defense to the death penalty and failed to identify the elementary school teachers and community members willing to testify on his behalf, violating Mahdi's right to the effective assistance of counsel.

A. The Court should reach this claim even though it was raised previously at the PCR stage.

This claim was raised and denied by the PCR court and also denied on federal habeas review. (2025APP 1325-1457); *Mahdi*, 20 F.4th at 901-05 (denying federal habeas claim of ineffective trial counsel relating to failure to present evidence from non-family lay witnesses). But there are good reasons for the Court to revisit the issue before Mahdi is executed.

First, the Court has never fully reviewed the claim on the merits. Following the PCR court's denial, this Court denied certiorari review, declining to conduct full appellate review. Were the Court to grant review of this petition, it would be the first time it has thoroughly examined the ineffective counsel claim with the benefit of full briefing and argument from the parties.

Nor is there any mandatory procedural bar to the Court reaching the merits. As already noted, the Court retains discretion in its original jurisdiction to reach meritorious issues that might be barred in other procedural contexts.

The first reason the Court should exercise that discretion here is that there is a significant flaw in the way the issue was adjudicated previously during PCR. A critical aspect of the claim is that trial counsel unreasonably stopped investigating after deciding that Mahdi's family was uncooperative or unhelpful, and counsel did not try to locate any non-family witnesses who could testify. However, the PCR court never even addressed the issue of non-family witnesses, instead excusing counsel's conduct by focusing solely on the resistance from Mahdi's family. (2025APP 1376-1384.) In essence, the PCR court denied this claim by ignoring its central pillar. The Court should undertake merits review now to ensure Mahdi is not executed without ever receiving proper state court review of the most important issue he raised during post-conviction.[5]

Merits review is also warranted because, at multiple stages of litigation, judges have expressed concern about the poor quality of trial representation that Mahdi received. Prior to reconsidering based on the State's motion, the PCR judge held that trial counsel's conduct was deficient. (2025APP 1285) ("I find that counsel's performance was deficient and fell below the 'reasonableness under professional norms' standard."). On federal habeas review, the district court agreed that the mitigating evidence at trial was "concise and lacking the detail presented at the PCR hearing." *Mahdi*, 2018 WL 4566565, at *31. In the Fourth Circuit, Chief Judge Gregory dissented from the denial of relief, in part, because trial counsel seemed to be disrespectful and dismissive toward Mahdi's family, and because trial counsel failed to uncover evidence that, as a

[5] The PCR court noted in passing that the testimony offered by non-family community witnesses was repetitive of the trial evidence but gave no analysis or explanation of that assertion. (2025APP 1380.) On federal habeas review, the Fourth Circuit agreed, but on suspect grounds. The Fourth Circuit asserted the defense's social history expert "testified at length" about the instability in Mahdi's family. 20 F.4th at 903-04. The Fourth Circuit's claim cannot be squared with the fact that the sum total of the trial testimony about mitigating evidence was 15 transcript pages. (2025APP 445-460.) This does not meet any conceivable definition of a person's life story being recounted "at length."

child, Mahdi was physically abused by his father. *Mahdi*, 20 F.4th at 908 ("Mahdi asserts his humanity: his capacity for redemption. This appeal then raises questions, not of Mahdi's guilt, but of whether it is too late to remedy trial counsel's failure to show the many ways in which Mahdi was a product of a traumatic and tragic upbringing.").

Similarly, the adequacy of Mahdi's capital trial defense merits a second look because new information has come to light since the 2011 PCR assessment, and this information supplies new context for representation in capital cases. Studies now demonstrate that the quality of representation makes an enormous difference in a trial's results. Sophisticated capital defense results in far fewer death sentences than a defense that is minimally adequate. For example, after state-funded capital defense offices were established in Virginia in 2005, the rate at which prosecutors took capital cases to trial was cut in half. Moreover, Virginia juries imposed about five to ten death sentences each year between 1985 and 2004, but between 2004 and 2011 there were no more than two death sentences per year. After 2011, no Virginia jury would impose another death sentence until capital punishment was abolished there in 2021.[6] Similarly, in North Carolina, 74% of that state's death row inmates were already on death row before reforms were enacted in 2001, including the creation of an Indigent Defense Services office. Before 2001, twenty or more death sentences were consistently imposed each year in North Carolina. But after

[6] John G. Douglass, *Death As A Bargaining Chip: Plea Bargaining and the Future of Virginia's Death Penalty*, 49 U. Rich. L. Rev. 873, 885-87 (2015) (Virginia's capital indictment rate remained steady while its capital trial rate was cut in half from about 40% to 20%; "[t]he most significant change" in law during this time was the creation of state-funded capital defense offices and adoption of standards for appointment of counsel, and "the decline in death sentencing coincide[d] with these reforms."); Brandon L. Garrett, *The Decline of the Virginia (and American) Death Penalty*, 105 Geo. L.J. 661, 661-62 (2017) (examining Virginia's capital trials before and after the creation of regional capital defense offices—the length of capital sentencing phases doubled and the complexity of defense evidence increased markedly—and finding that improvements in capital defense could explain Virginia's sharp decline in death sentencing).

the indigent defense office was created alongside other reforms, that number dropped to an average of less than four new death sentences per year.[7] Even if one accepts the premise that the capital defense Mikal Mahdi received satisfied a low constitutional threshold of objective reasonableness, as that was understood almost 15 years ago in 2011, our current and much more well-informed understanding of the capital defense function should prompt this Court to revisit the question, particularly in circumstances as stark as the ones here.

Finally, even if the Court is concerned about the implications of the PCR judge's determination that the PCR mitigating evidence was insufficient to change the outcome, the discussion below, in Claim II, of after-discovered evidence will detail even more new mitigating evidence that was not available at the time of the 2011 PCR hearing. The post-2011 evidence includes extensive new medical and psychological insight into the reasons why Mahdi's upbringing was extraordinarily traumatizing, and thus mitigating. Taken together with the other factors outlined here, the Court can be assured that any new trial, hearing, or reassessment of the death sentence would not merely rehash prior proceedings, but would include substantial new evidence that is critical to understanding the mitigating nature of Mahdi's life experiences.

B. Legal framework for ineffective assistance claims.

The Sixth Amendment to the U.S. Constitution guarantees the right to counsel at trial. In *Strickland v. Washington*, 466 U.S. 668 (1984), the Court held, pursuant to the Sixth Amendment, that a conviction or sentence must be vacated when a trial attorney's conduct falls below an objective standard of reasonableness, in the absence of which, there is a reasonable

[7] Frank R. Baumgartner, *North Carolina's Wasteful Experience with the Death Penalty*, https://tinyurl.com/3h5j6ef4 (2015) pp. 11, 13 (finding that "the vast majority of current death row inmates were sentenced under a system that did not provide the safeguards we now require.").

probability the trial would have had a different result. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

In *Strickland*, the Court held that an attorney's decision to end an investigation into their client's case is only reasonable to the degree that the factual basis for that decision is also reasonable:

> [S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.

466 U.S. at 690-91.

The Court applied this rule in *Wiggins v. Smith*, 539 U.S. 510, 522-23 (2003), explaining the "focus is on [the issue of] whether the investigation supporting counsel's decision not to introduce mitigating evidence of Wiggins' background *was itself reasonable*." (emphasis in original). In *Wiggins*, the Court determined that trial counsel's conduct was deficient because they ended their investigation prematurely, prior to becoming sufficiently informed about their client's life: "counsel abandoned their investigation of petitioner's background after having acquired only rudimentary knowledge of his history from a narrow set of sources." *Id.* at 524.

Wiggins also established that trial counsel merely having "*some* information with respect to [their client's] background" does not necessarily mean "they were in a position to make a tactical choice" regarding their mitigation defense. (emphasis in original). When "assessing the reasonableness of an attorney's investigation . . . a court must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further." Critically, "*Strickland* does not establish that a cursory investigation automatically justifies a tactical decision with respect to sentencing

strategy. Rather, a reviewing court must consider the reasonableness of the investigation said to support that strategy." *Wiggins*, 539 U.S. at 691.

C. Mahdi's trial attorneys' conduct was deficient because they ended their search for mitigating evidence prematurely.

Mahdi was arrested in July 2004 and initially represented by Carl Grant and Glenn Walters. When Grant was injured in a motorcycle accident, Joshua Koger was appointed as his replacement about four months before trial began. At the PCR hearing, Grant could only recall being involved in one death penalty case prior to Mahdi's. (2025APP 1126.) Koger testified this was his first capital case serving as second chair. (2025APP 1234.) Glenn Walters, who was lead counsel, also had only tried a single capital case prior to Mahdi's. (2025APP 7, 2025APP 1168.) As described here, their inexperience would show.

Mahdi's trial team included a mitigation investigator and a testifying social worker who met with Mahdi; obtained school, hospital, and prison records; gathered additional information that had been assembled by Mahdi's North Carolina defense team; and spoke with various members of Mahdi's family. *Mahdi*, 20 F.4th at 901.

However, the PCR court found, and the Fourth Circuit agreed, that this investigation was stymied when Mahdi's family members failed to cooperate. The PCR court determined that Mahdi's family members were unwilling to serve as witnesses or assist trial counsel. 20 F.4th at 902. Similarly, during the PCR hearing, trial counsel and the mitigation investigator testified that Mahdi's close family members either refused to participate or were only willing to discuss subjects that were unhelpful to Mahdi's defense. *See* 20 F.4th at 874-79 (Fourth Circuit's full summary of the trial-level mitigation investigation).

Even assuming this is an accurate description of trial counsel's investigation and the challenges they encountered, it remains uncontested that trial counsel made only minimal efforts

to go beyond Mahdi's family to identify non-family witnesses who could have provided meaningful testimony about Mahdi's background. As the Fourth Circuit itself summarized, mitigation investigator Paige Haas "visited schools and spoke with several teachers who knew and remembered Mahdi but had not spent significant amounts of time with him." 20 F.4th at 901; *see also id.* at 874-75; (2025APP 699 A001825.) The testifying social worker, Marjorie Hammock, met with a single community member who "didn't know much about" Mahdi. *Id.* And trial counsel themselves did not extend their search for non-family witnesses beyond their reliance on Mahdi's family to identify those witnesses, and the family was "not helpful" in that regard. 20 F.4th at 901-02; *see also* (2025APP 1176.) Trial counsel Walters conceded that he did not speak with any of Mahdi's special education teachers. (2025APP 1167.) Thus, faced with what they perceived as an unhelpful family, trial counsel made only the most minimal efforts to identify other potential witnesses.

It was objectively unreasonable for Mahdi's attorneys to end their investigation without identifying any community members willing to testify on their client's behalf. After speaking with Mahdi's family, they knew that his childhood was unstable. They were aware of the "dysfunction" stemming from Mahdi's father Shareef, that Shareef was an "oppressive husband," and that, as a child, Mahdi was "severely beat[en] . . . over and over again" by another family who was supposed to be taking care of Mahdi when his father could not. (2025APP 1154-1157, 1160.) Trial counsel acknowledged that they had difficulty obtaining assistance from Mahdi's family "to discuss his upbringing, his family, what shaped and molded and resulted in Mr. Mahdi." (2025APP 1165.) But counsel recognized that "what you want to show to the [sentencer] is that Mikal Mahdi didn't have a chance in life and perhaps you shouldn't take his life." (2025APP 1166.) Given all this, there was no good reason for counsel to close up shop on

their investigation without identifying any people in the community who could – and would – give a compelling firsthand account of Mahdi's difficult life. In fact, during the PCR hearing, counsel testified about their work on the case and gave no reason for their failure to continue looking for mitigating evidence beyond the family members who they believed were uncooperative.

The law is clear. Capital mitigation investigations cannot be curtailed precipitately when the attorneys know full well that additional, important information is available. *See Wiggins*, 538 U.S. at 525 ("The scope of their investigation was also unreasonable in light of what counsel actually discovered in the DSS records" and "any reasonably competent attorney would have realized that pursuing these leads was necessary to making an informed choice among possible defenses"); *Rompilla v. Beard*, 545 U.S. 374, 389 (2005) (counsel are not required to search for "a needle in a haystack," but they may not short circuit their investigation when they "truly [have] reason to" believe that mitigating evidence is available).

Similarly, a lack of cooperation by a client's family does not excuse counsel from making reasonable efforts to investigate and present a persuasive mitigation case. In *Porter v. McCollum*, 558 U.S. 30, 40 (2009), the Court held that "Porter may have been fatalistic or uncooperative, but that does not obviate the need for defense counsel to conduct *some* sort of mitigation investigation." (emphasis in original). The Court articulated the same principle in *Rompilla*, 545 U.S. at 381-82 (finding capital defense counsel deficient even though both the client and his family were not helpful to the mitigation investigation). Likewise, in the commentary to Guideline 10.11, the ABA Guidelines inform capital defense attorneys that "[c]ommunity members . . . who interacted with the defendant or his family, or have other relevant knowledge

or experience often speak to the [sentencing authority] with particular credibility."[8] In light of this law and guidance, the reticence of Mahdi's family cannot excuse counsel's failure to take reasonable measures to find non-family witnesses who would cooperate.

D. Mahdi's trial counsel were deficient because they presented an extremely superficial picture of Mahdi's background that concluded in less than 30 minutes.

The meager mitigating evidence that trial counsel presented also demonstrates how they unreasonably shut down their efforts to defend Mahdi from a death sentence far too early, resulting in a patently deficient evidentiary presentation. Indeed, "[e]ven if trial counsel's investigation could be deemed sufficient or adequate," they may nonetheless be deemed deficient if they "also failed to present any significant mitigating evidence." *Council v. State*, 380 S.C. 159, 174-75, 670 S.E.2d 356, 364 (2008). *See also Weik v. State*, 409 S.C. 214, 234, 761 S.E.2d 757, 767 (2024) (recognizing that the "sentencing stage is the most critical phase of a death penalty case, and that "[a]ny competent counsel knows the importance of thoroughly investigating *and presenting* mitigating evidence.") (emphasis added; internal citations omitted). The mitigation showing by Mahdi's trial counsel was a far cry from significant or even adequate.

Mahdi's jury selection began in November 2006 before The Honorable Clifton Newman. After the jury was selected, Judge Newman held an in-chambers conference to address a possible guilty plea. (2025APP 21-22.) Judge Newman allowed Mahdi to consider his options overnight. The next morning, Judge Newman explained to Mahdi that, under state law, if he pled guilty, the judge would determine the sentence, not the jury. When courtroom proceedings resumed, trial counsel announced that Mahdi would plead guilty, and the plea was accepted. (2025APP 21-65.)

[8] This refers to the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (rev. 2003), https://tinyurl.com/yc2e68sm.

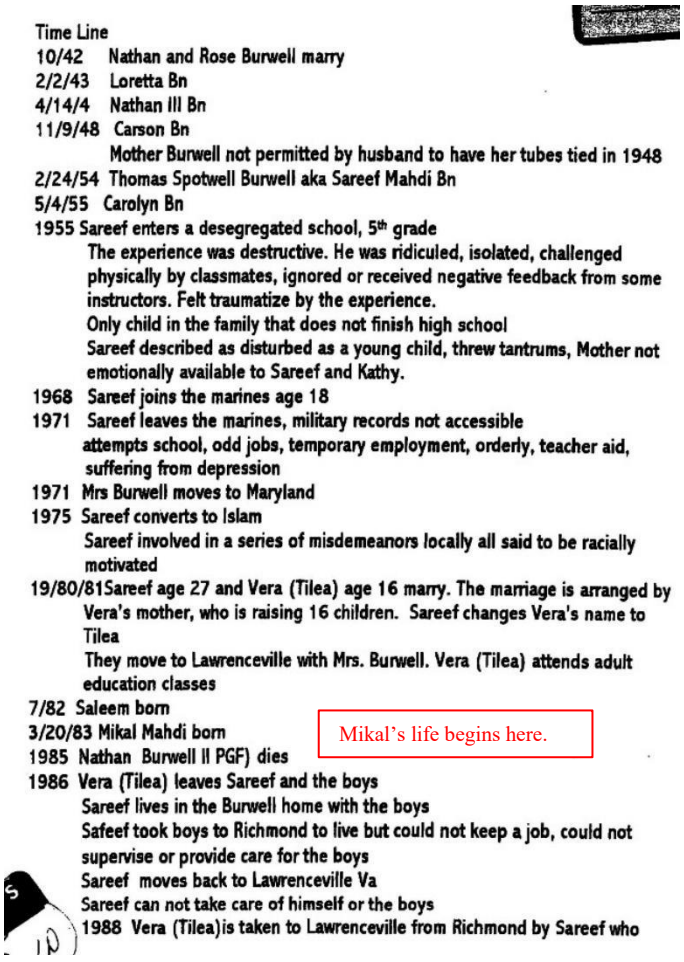
The sentencing hearing began with defense counsel's superficial opening statement. Counsel noted that Mahdi was 21 at the time of the crime and summarized his life experience in two brief sentences: "Mother left him at age four, left him with his father to raise he [sic] and his brother . . . . [H]is father was ill-equipped for this responsibility . . . [so] Mr. Mahdi was left to raise himself." (2025APP 72.) Nothing more was offered during the opening to humanize Mahdi.

2Next, over more than two days, the State proceeded to call 28 witnesses to establish the facts of the crimes, the aggravating circumstances, Mahdi's prior criminal record and other bad acts, his behavior in custody, and the impact of the death of Captain Myers on his family, friends, and colleagues. (2025APP 74-400); *see also* (2025APP 1330-1338) (summarizing the State's evidence concerning the capital crime and additional aggravating evidence, including prior crimes and poor conduct in prison).

In contrast, the defense called two witnesses. Rather than presenting a single person from the community or a family member who actually knew Mahdi, trial counsel relied on one expert witness, clinical social worker Marjorie Hammock, to present a summary of Mahdi's life experiences. Hammock's testimony, excluding the explanation of her credentials and methodology, *spanned just 15 pages of transcript*, providing only a broad, detached overview of Mahdi's upbringing. (2025APP 445-460, 1311.) At most, Hammock's description of Mahdi's life lasted 30 minutes, and was probably even shorter.[9]

[9] Hammock's testimony describing Mahdi's life is about 2,800 words. There does not appear to be any authoritative source on the average words spoken per minute. Various internet sources indicate it ranges from 100 to 200. For example, the Wikipedia entry on words per minute (https://tinyurl.com/yksrn2z7) states that presentations range from 100 to 125, while audiobooks are generally about 150.

Hammock prepared two documents for Judge Newman. There was a two-page biographical timeline, only half of which covered Mahdi's life:



Time Line
10/42 Nathan and Rose Burwell marry
2/2/43 Loretta Bn
4/14/4 Nathan III Bn
11/9/48 Carson Bn
Mother Burwell not permitted by husband to have her tubes tied in 1948
2/24/54 Thomas Spotwell Burwell aka Sareef Mahdi Bn
5/4/55 Carolyn Bn
1955 Sareef enters a desegregated school, 5th grade
The experience was destructive. He was ridiculed, isolated, challenged physically by classmates, ignored or received negative feedback from some instructors. Felt traumatize by the experience.
Only child in the family that does not finish high school
Sareef described as disturbed as a young child, threw tantrums, Mother not emotionally available to Sareef and Kathy.
1968 Sareef joins the marines age 18
1971 Sareef leaves the marines, military records not accessible
attempts school, odd jobs, temporary employment, orderly, teacher aid, suffering from depression
1971 Mrs Burwell moves to Maryland
1975 Sareef converts to Islam
Sareef involved in a series of misdemeanors locally all said to be racially motivated
19/80/81Sareef age 27 and Vera (Tilea) age 16 marry. The marriage is arranged by Vera's mother, who is raising 16 children. Sareef changes Vera's name to Tilea
They move to Lawrenceville with Mrs. Burwell. Vera (Tilea) attends adult education classes
7/82 Saleem born
3/20/83 Mikal Mahdi born
1985 Nathan Burwell II PGF) dies
1986 Vera (Tilea) leaves Sareef and the boys
Sareef lives in the Burwell home with the boys
Safeef took boys to Richmond to live but could not keep a job, could not supervise or provide care for the boys
Sareef moves back to Lawrenceville Va
Sareef can not take care of himself or the boys
1988 Vera (Tilea)is taken to Lawrenceville from Richmond by Sareef who abuses her. Nathan rescues Vera. Mikal and Saleem witness more abuse and violence
1988 Vera moves to Pottsdale without the children to get away from Sareef
Sareef attacks Mrs Burwell
Vera goes to the military
10/91 Saleem sent to Texas to live with aunt. Mikal went to Baltimore to live with Uncle Carson and Aunt Lawanda Green Burwell. Carson described Mikal as very smart but unable to read at age 8
8/23/92 Mikal involuntary admission in a psychiatric facility after suicide threat/gesture and Mikal hospitalized Admission DX Axis I, Major Depression with suicidal ideation, adjustment disorder, R/O Adjustment Disorder, Axis II Developmental Reading Disorder, Axis III Hx of right arm and right leg fractures
Saleem comes back from Texas after disrupting his aunt home,
10/19/92 Mikel discharged from Walter P. Carter Mental Health. Discharge DX Axis I Major Depression, Single episode
Mikal also becomes more disruptive in his uncle's home in order to force his return to Lawrenceville to join his father and brother. He has become even more defiant after he learns that his brother has joined his father. The three reunite and live on Burwell property with the boys. This was an isolated place in the country and they often had no food, heat or money.
12/97 Mikal sent to reception and diagnostic center –Culpepper in a juvenile facility for two counts of b& e and two counts of grand larceny
Mikal released from facility and Sareef sent Mikal to Richmond to live with his mother
Saleem finishes high school,
Saleem goes to Job Corp and then joins the Army
12/97 Mikal committed to Juvenile facility
4/2001Mikal transferred VA Dept of Corrections

Mikal's life begins here.

(2025APP 444-445, 536-537.)

Trial counsel also had Hammock present a "school experience summary." That document was a half-page:

SCHOOL EXPERIENCE SUMMARY

1988 Sister Clara Muhammad Richmond, VA	Records not available
9/15/88Totaro Elemen availabel Lawenceville, VA	K 23 abs Transferred from Sister Clara Muhmmad Narrative records not
Chamberlayne Elemen Richmond, VA	1st. grade Transferred from Totaro, Narrative records not available
1991-1992 Scotts Branch Elemen program Baltimore MD authority expectation	2nd 3 abs Placed in average math program and below average reading Needs improvement in meets standards for behavior and show respect for Reading and written language skills remain below grade level Attends special reading and qualifies for chapter I
Scotts Branch Elemen	3rd 6 abs Place in average reading and math. Needs improvement in written composition, letter formation, vocabulary, written work, and showing respect for authority. Outstanding in Science. Works well in small groups
Totaro Elemen	4th 12 ab 6 abs Appears to be stifling his potential .Does not appear motivated
ITotaro Elemen year he	5th 35 Mikal has not attended school since the 94-95 school year. During that was a 5th grader at Totaro, earned 6 b's and 1 c His father removed Mikal in order to home school. There was no official information that this schooling had
Totaro Elemen	6th 35 ab Hanover Juvenile

1999 enrolled in academic/vocat courses through the Dept of Correction Education Services

(2025APP 444-445, 451, 538.)

In essence, Mahdi's entire life—in this proceeding to determine whether he should live or die—was boiled down to a few short bullet points and less than a half hour of testimony. This Court has already held that a capital mitigation presentation lasting seven minutes was so egregious that it "represents a classic *Cronic* ineffectiveness case . . . because there was a total breakdown in the adversarial process . . . ." *Nance v. Ozmint*, 367 S.C. 547, 554-55, 626 S.E.2d 878, 882 (2006). If a seven-minute mitigation showing is so egregious that it is presumptively prejudicial, the presentation here, which was only a few minutes longer, should at least be deemed objectively unreasonable under the *Strickland* standard.

James Aiken was the only other defense witness. He testified as a prison adaptability expert and provided no additional information about Mahdi's background. (2025APP 411.) Although Aiken characterized Mahdi as an "immature boy in a big prison system," (2025APP 415), his testimony focused on Mahdi's disciplinary record. The entirety of Aiken's direct examination testimony, after reciting qualifications, spanned 13 transcript pages. (2025APP 411-423.) Worse yet, instead of humanizing Mahdi, Aiken actually dehumanized him, repeatedly emphasizing to the sentencing judge how Mahdi could be brutalized in prison if necessary, and even killed. Aiken described how prison staff could use electrical shocks with a stun belt, put Mahdi in a restraint chair or tie him down to a bed, put him into a "dog run" for limited time outside, order a pack of dogs to attack him, and even have snipers kill Mahdi if necessary. (2025APP 419, 421-422.)

During closing argument, defense counsel continued their abdication of any meaningful effort to humanize Mahdi and show that his life was worth saving. Trial counsel's closing remarks concluded after only 16 transcript pages. (2025APP 490-506.) The portion addressing Mahdi's upbringing was even quicker, lasting no more than three paragraphs and just a single transcript page:

> [T]his is a troubled child.
>
> Sheriff Woodley walked into the courtroom and what did he state? He stated there was a standoff with the police and the young man's father. As a young boy, he's being taught defiance. As a young boy, he's being taught to rebel against authority. This is the home, the trappings, that he's growing up in. And, of course, Sheriff Woodley stated that [Mikal] stated, I'm going to kill a cop.
>
> In addition to that, we have the testimony of Officer Koehler. There's a confrontation where there's a use of pepper spray and things of that nature. And what does the young man state at that time? Please shoot me, please shoot me.

> It is consistent throughout his life and his behavior that this young man has continuously looked for a family structure with his mother, with his father, the trappings that you need in order to grow and become a productive citizen in society. It appears that he never received that.

(2025APP 497.) This was the entirety of defense counsel's argument about Mahdi's life experiences.

Making matters worse, counsel even went so far as to credit the prosecution's contention that Mahdi's background didn't matter:

> That's no excuse for murdering anyone.
>
> We heard the testimony of Marjorie Hammock. And there was a mood that came over the courtroom . . . . [that] just because your childhood is bad, that doesn't give you the right to go out and kill. And the Solicitor is right when he says that.

(2025APP 497-498.) At no point did Mahdi's own attorneys offer any counterpoint or reason why his traumatic upbringing mattered when it came to deciding the appropriate punishment. Counsel instead relied heavily on Mahdi's guilty plea, arguing repeatedly that he had accepted responsibility.

The death sentence that followed is not particularly surprising given the barely-there mitigating evidence that was presented. Following the close of evidence, Judge Newman found the murder of James Myers "was committed while in the commission of burglary in the second degree" and "while in the commission of larceny with the use of a deadly weapon," and found additional nonstatutory aggravating circumstances based on Mahdi's prior crimes and bad acts. (2025APP 512-516.) As to mitigating circumstances, Judge Newman explained that his general approach was "to temper justice with mercy and to seek to find the humanity in every defendant that I sentence." But in light of the limited defense evidence, Judge Newman believed "[t]hat sense of humanity seems not to exist in Mikal Deen Mahdi." (2025APP 521.) Judge Newman

considered "what the defense contends to be the defendant's turbulent and transient childhood and upbringing," but did "not believe that [it] . . . contributed in any significant way to" the crimes, and thus declined to give it "any significant weight in the Court's ultimate decision as to the sentence to be imposed." (2025APP 517-518.)

Trial counsel's presentation at the sentencing phase failed to live up to any objectively reasonable measure of meaningful representation. The key facts are these: For a client who lived through years of trauma and abuse from the time he was born, counsel presented just a single, detached, expert witness and testimony that spanned only 15 transcript pages. The recitation of this information took less than 30 minutes. Trial counsel's only other witness was a former prison warden who said nothing about Mahdi's upbringing. Rather than providing information that might show Mahdi's humanity or reasons not to execute him, the former warden told Judge Newman that prison staff could maim or kill Mahdi if necessary. Then in closing argument, trial counsel conceded the prosecution's contention that Mahdi's childhood did not matter and offered just three cursory paragraphs to explain the mitigating evidence.

This showing fails to come even remotely close to the heightened reliability the Eighth Amendment requires of capital cases. The U.S. Supreme Court authorized states to seek death sentences because of the adoption of sentencing procedures designed to avoid "a substantial risk that the [death penalty will] be inflicted in an arbitrary and capricious manner." *Gregg v. Georgia*, 428 U.S. 153, 188 (1976). The Court cautioned that "there is a corresponding difference [between capital and non-capital cases] in the need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U.S. 280 (1976). Indeed, "[a]mong the most important and consistent themes in [Eighth Amendment death penalty] . . . jurisprudence is the need for special care and deliberation in

decisions that may lead to the imposition of that sanction." *Thompson v. Oklahoma*, 487 U.S. 815, 856 (1988) (O'Connor, J., concurring).

These requirements would have little if any meaning in South Carolina were this Court to hold that "special care and deliberation" in a capital trial exists where the defense evidence and arguments about the client's life was addressed through the brief testimony of one witness, and a closing argument by counsel that was over in seconds. There is no way the complexities of any person's life, let alone the tumultuous one that Mikal Mahdi endured, can be explained effectively in such a halfhearted fashion. *See Eddings v. Oklahoma*, 455 U.S. 104, 110-11 (1982) (the Eighth Amendment requires "a system of capital punishment at once consistent and principled but also humane and sensible to the uniqueness of the individual.").

That is why the U.S. Supreme Court has repeatedly found capital defense attorneys deficient based on trial presentations significantly more robust than the one here. In *Williams v. Taylor*, 529 U.S. 362, 369 (2000), counsel were found deficient even though they offered mitigating testimony from Williams' mother, two neighbors, and a recorded statement of a psychiatrist. In *Rompilla v. Beard*, 545 U.S. 374, 378 (2005), counsel were deemed deficient even though they presented testimony from five different family members. In *Sears v. Upton*, 561 U.S. 945, 947 (2010), deficiency was found where the trial attorneys put on testimony from seven of the defendant's family and loved ones. Similarly, in *Weik v. State*, 409 S.C. 214, 216, 761 S.E.2d 757, 758 (2014), this Court found counsel deficient in a capital case even though their trial evidence involved three mental health experts who testified about the defendant's schizophrenia, hallucinations and delusions, and suicidal thoughts. The trial mitigation here fails to measure up to any of these yardsticks, which were all found to constitute substandard representation.

Trial counsel's weak attempt to defend Mahdi from a death sentence also failed to live up to the ABA Guidelines for capital defense. *See Stone v. State*, 419 S.C. 370, 397, 798 S.E.2d 561, 576 n.6 (2017) ("The Supreme Court of the United States and this Court have relied on the ABA Guidelines to determine whether counsel's performance was reasonable" when evaluating claims of ineffective assistance). Mahdi's counsel was required to make "extraordinary efforts on behalf of the accused." 2003 ABA Guidelines, p. 923. They were supposed to "unearth, develop, present, and insist on the consideration of those compassionate or mitigating factors stemming from the diverse frailties of humankind." *Id.* at 927. Counsel should have known to collect "corroborating information from multiple sources . . . to ensure the reliability and thus the persuasiveness of the evidence." *Id.* at 1025. Mahdi's trial attorneys knew that he spent many years incarcerated in juvenile and adult prisons and were supposed to "explore the adequacy of institutional responses to childhood trauma, mental illness, or disability to determine whether the client's problems were ever accurately identified or properly addressed." *Id.* at 1025-26. In sum, trial counsel's "critically important" task was "to construct a persuasive narrative in support of the case for life, rather than to simply present a catalog of seemingly unrelated mitigating factors." *Id.* at 1061. Placing what was presented at Mahdi's capital trial side-by-side with these standards of practice lays bare the gross inadequacy of the sentencing phase defense.

Similarly, Rule 1.3 of the South Carolina Rules of Professional Conduct instructs that lawyers must "take whatever lawful and ethical measure are required to vindicate a client's cause or endeavor . . . . [and] also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." It's impossible to say that an attorney has vindicated a capital client's cause, or shown dedication and zeal, when the defense showing is

superficial enough to end so fast that a court wouldn't even need to take a morning break before hearing all the evidence. The tissue-paper-thin defense that Mahdi received does not pass the most fundamental test of common sense. His trial attorneys' presentation was both objectively unreasonable and patently inadequate.

E. If trial counsel had conducted a thorough investigation, they could have presented a complete story of Mahdi's life that would have had a reasonable chance of resulting in a life without parole sentence.

Taking at face value trial counsel's assertion that they made a reasonable strategic judgment in not calling family witnesses to testify, there was still a far more complete account of Mahdi's life that could have been told through the social worker they did call to testify.[10] That social worker, Marjorie Hammock, only offered the trial judge broad generalities about Mahdi's upbringing. Hammock described Mahdi's childhood as "rather chaotic" and involving "conflict" and "abuse" between his parents; she provided no further description, such as the time Mahdi's father beat his own mother or kidnapped his wife. Hammock said Mahdi's father had a "limited . . . ability to parent effectively" and was "extremely troubled;" Hammock said Mahdi had a "poor history of school progress;" she never described how teachers tried to provide him with extra support, nor did she explain how Mahdi's father responded by pulling him from elementary school under the guise of "homeschooling" and then did nothing but expose Mikal to conspiracy-filled rants. Hammock referenced the fact that Mahdi was sent to a "juvenile facility;" she never described the hundreds of hours of solitary confinement Mikal was subjected to as an adolescent. (2025APP 445-460.)

[10] Recall, however, Fourth Circuit Chief Judge Gregory's observation that trial counsel exhibited tremendous disrespect for the Mahdi family when considering the information they had to offer, including the assumption that "many Black families are dysfunctional." *Mahdi*, 20 F.4th at 919.

If trial counsel had conducted the competent, thorough investigation that was done at the PCR stage, Hammock could have properly described the trauma that occurred at nearly every stage of Mahdi's life, making a life without parole sentence far more likely.

1. Mikal's earliest years were dominated by his abusive, mentally ill father.[11]

Mikal Mahdi's parents—Shareef and Vera Mahdi—were in an arranged marriage. Vera was only 16 at the time of their marriage, while Shareef was a decade older. (2025APP 1369.) Although Vera was not thrilled about an arranged marriage, she wanted to escape the poverty and abuse of her family. (2025APP 1481.) Shareef and Vera married and had their first child, Saleem, who is Mikal's older brother. (2025APP 1481-1482.) Vera later told her sister that Saleem was conceived when Shareef raped her. (2025APP 1481.) About a year after Saleem's birth, Vera became pregnant with Mikal. (2025APP 1482.) Mikal Mahdi was born in 1983. (2025APP 4221.)

After Mikal was born, Shareef continued his controlling and abusive behavior towards Vera. (2025APP 1458.) Mikal has reported that one of his earliest memories was of his father slamming his mother through a glass table and yelling, "Bitch, you wanted the God damn table, you got it." Mikal remembers pleading with his dad to stop. (2025APP 1483.)

Vera was forced to flee the abusive relationship when Mikal was only about four years old. (2025APP 624-625, 635.) When she told Shareef that she was taking Mikal and Saleem, Shareef said he would kill his sons before letting them leave with her. (2025APP 1483.) Vera fled without the children, who were later told she left them behind because she did not love them. (2025APP 1464.) Shareef didn't allow Vera to visit her sons, and he eventually told them

[11] First names are used in this discussion because it addresses Mahdi's childhood and teenage years, and to avoid confusion among family members with the same last name.

that she had died. (2025APP 1484.) Shareef's combustible personality and abusive behavior was well known, even to the local Brunswick County Sheriff. (2025APP 1458-1460.)

Shareef's instability was not surprising in light of his own challenging background. Shareef's parents had an abusive relationship. His mother (Mikal's grandmother) was known to say that all of her five children were conceived through rape. Throughout her kids' upbringing, she was depressed and despondent, and had a difficult time engaging with her children. When he was in elementary school, Shareef, who is black, was sent to an all-white school that was just beginning the process of integration. There, he experienced racism, name-calling, and twice saw his sister victimized by sexual assault. Shareef had been born Thomas Burwell, but as an adult, he joined the Nation of Islam and changed his name, in part, because of the intense distrust of white people that he developed from his childhood years. (2025APP 1482.) Shareef's volatility would come out in a number of ways during Mikal's upbringing. Later in life, after Mikal was sentenced to death, Shareef would be diagnosed with schizophrenia. (2025APP 1507; mental health records are available at 2025APP 1597, 1600.)

After Vera left because of his abuse, Shareef did not have the skills to be a single parent. He was depressed, constantly moving, and unable to keep a job. (2025APP 578.) Mikal's family members, including his Uncle Carson, recalled Shareef was not meeting Mikal's most basic needs. (2025APP 578, 580.) Shareef left the boys completely unsupervised. Between the ages of five and eight, Mikal was frequently forced to look after himself. Shareef had no regard for his sons' stability and moved them constantly from school to school. (2025APP 551, 578.) When Mikal did attend school, his records show irregular attendance and major gaps in his education and abilities. (2025APP 1486-1487) At one point, Shareef moved out of his mother's house with both boys, choosing instead to live in the woods on her property. (2025APP 822.) The

psychiatrist who evaluated Mikal for the PCR hearing, Dr. Donna Schwartz-Watts, noted, "the amounts of disruptions that he had in his childhood, I have never seen anything like it . . . . There was just no stability in his early development at all." (2025APP 1002-1003.)

2. Mikal's depression emerged when he was only eight years old.

It soon became apparent that Shareef could not care for the children. Mikal could not read and was not getting proper nutrition. (2025APP 1357, 673-674.) Mikal's Uncle Carson and Aunt Lawanda Burwell took him to live with them in Baltimore, and Saleem went to live with family members in Texas. (2025APP 581-582.) In Baltimore, Carson spent a lot of time with Mikal, teaching him to read and helping him with his schoolwork. (2025APP 589-590.)

Nonetheless, Mikal continued to struggle with his mental health. When he was in second grade, Mikal's principal contacted Carson, informing him that Mikal had said, "[W]hy doesn't someone just shoot me? If I had a gun, I would shoot myself." (2025APP 585.)

Dear Mr. and Mrs. Burwell,

This letter is a follow-up of my phone conversation with Mr. Burwell on March 5, 1992. During our conversation I shared with Mr. Burwell that Mikal said, "Why doesn't somebody just shoot me? If I had a gun I would shoot myself." We are concerned for such a strong comment is not expected from a second grader.

If I can be of any further assistance. Please feel free to call.

Sincerely,

Joan L. Brown
Principal

School officials recommended psychiatric treatment, which Mikal did not receive. (2025APP 603.)

The summer following his second-grade year, Mikal visited his father in Virginia where he learned his mother was in fact alive. (2025APP 1421.) Shareef used Mikal and his brother as bait to kidnap Vera. (2025APP 1489.) When Shareef saw Vera, he immediately started to abuse her and threatened to kill her in front of the children. Shareef then took Vera to the woods and assaulted her. (*Id.*) When Vera escaped the vicious beating, Shareef's mother and sister quickly drove her out of town to her family in Richmond. (*Id.*)

Mikal returned to Baltimore to live with his Uncle Carson and Aunt Lawanda. (*Id.*) But even away from his father, Mikal continued to struggle. One day, Mikal's Aunt Lawanda got upset because he would not finish his homework, and she whipped him. (2025APP 596.) After she finished, Mikal called the police. (2025APP 597.) When they arrived, Mikal asked the officer for his gun so he could shoot himself. (2025APP 1490.) Mikal was then committed to a psychiatric facility, the Walter Carter Center, and hospitalized for two months. (2025APP 600.) He was only nine years old.

At the hospital, Mikal was asked what he would want if he was granted three wishes. (2025APP 552.) His only wish was for his family to be reunited. (*Id*.) When he was asked what he would wish for if he could not have his family back together, Mikal told the doctor that he would "jump off a bridge, shoot myself, or kill myself with my bow and arrows." (2025APP 965.)[12] Mikal's treating physician noted anxiety and trauma, and recommended a structured and safe residential and educational environment. (2025APP 755, 773.) Mikal was diagnosed at the age of nine with major depression and a rule-out diagnosis of post-traumatic stress disorder.

[12] The one-and-a-half page biographical timeline that trial counsel presented made a single, unexplained reference to "suicide/threat gesture" and "suicidal ideation." (2025APP 444-445.) The sentencing judge was not given any of the more specific information shared here about Mikal's suicidal ideation and statements at age nine.

(2025APP 1577.) One of the PCR psychology experts, Dr. Craig Haney observed, "I don't ever . . . remember seeing a case of a 9-year-old talking about suicide as much as Mikal did and really a kind of childhood depression being manifested in school at an earlier age." (2025APP 092.) However, after Mikal was released from the Walter Carter Center, there is no indication that any of his family members sought any further counseling or treatment for him, even though it was recommended. (2025APP 904-905.)

At the time he was discharged, Mikal was in third grade. He showed both academic and behavioral progress that year. Myra Harris, his third-grade teacher, said that when Mikal entered her class, he was at first "withdrawn," but his socialization improved and she "developed a relationship with him where we would sit and talk." (2025APP 650.) Ms. Harris recalled how Mikal's creativity and artistic talent emerged in the supportive confines of her class, away from his troubled home life. (2025APP 1647.)

The next year, though, when Mikal's brother Saleem was sent back to live with their father, Mikal's progress dissipated, as he felt unwanted and acted out. As mental health experts would explain at the PCR hearing, recklessness and disruptive behavior are well-known symptoms of depression. (2025APP 981, 989-990, 1009.)[13]

Mikal's Aunt Lawanda became frustrated with his behavior and sent him away to live with Shareef again. (2025APP 1491-1493.) The progress Mikal made in third grade was lost when he was once again in Shareef's care. Shareef continued to fail to meet Mikal's most basic needs. (2025APP 1496-1498.) Mikal began his fourth-grade year in Lawrenceville, where he was

[13] Dr. Malcolm Woodland, the psychologist retained to evaluate Madhi in recent years, also explains that "[w]hen alterations in arousal coalesce with further trauma, sadness, and anxiety, the outcome is emotional dysregulation, particularly in children and adolescents." (2025APP 1661.)

put in special education classes due to disruptive behaviors. (2025APP 1493-1494.) He was again diagnosed by a school psychologist as having depression. (2025APP 1465-1467.)

3. Mikal's father refused support for him, pulled him out of school, and then neglected Mikal and subjected him to conspiracy-laden rants.

Between Mikal's depression and Shareef's interference, it was difficult for Carol Wilson, his fifth-grade teacher, to help Mikal. (2025APP 683.) Mikal was quiet and kept to himself. Ms. Wilson could not get any "joy," "interest," or "motivation" out of Mikal. (*Id.*) Ms. Wilson and the school psychologist "really wanted to help [him]," but it "wasn't able to materialize" because Shareef "yanked" Mikal out of Ms. Wilson's class. (2025APP 684) Upon hearing from teachers that Mikal was having emotional problems and needed special services, Shareef stormed out of the meeting. (2025APP 1494.) Shareef declared that he didn't want any white man (the school psychologist) writing negative reports about his son, although this was an odd reaction since a majority of the school staff in the meeting were black. (2025APP 670.) Shareef claimed he would homeschool Mikal. According to Ms. Wilson, Mikal "just got lost in the cracks." (2025APP 685.) An evaluation at this point showed that he was depressed, lacked self-esteem, and felt hopeless. (2025APP 1005-1006, 1465-1467.)

By this time, Mikal was still only eleven years old. (2025APP 1494.) Shareef removed Mikal from the school system and provided no structure for Mikal or his brother. (2025APP 1492-1494.) Shareef was supposed to be home schooling his kids, but the local sheriff "personally made a complaint to the Brunswick County Department of Social Services and the School Board because I knew Shareef was not actually home schooling the boys." (2025APP 1459.)

Shareef's treatment of Mikal and his brother during these years of "home schooling" was tantamount to abuse and neglect. They lived in an isolated, rural area of Virginia, where Shareef

would take Mikal and his brother on trips into the woods, teach them how to fight, and train them for the "New World Order" in which there were "white folks coming to kill them." Shareef spent hours upon hours "ranting and raving" about religious matters and "the evil empire of robber barons" who had stripped the land. Meanwhile, Shareef had no job and lived off of public assistance and money his mother gave him, prompting Mikal to begin stealing to help support his father. Mikal was only 11 to 15 years old during these years. (2025APP 1495-1497.)

Events that occurred outside the family would confirm just how unstable Shareef was during this period. In addition to storming out of the school when asked by teachers to allow Mikal to receive extra support, Shareef was fired from his substitute teaching position for yelling at and belittling students and school staff alike, and calling fifth grade girls "bitches" and "whores," and telling them they should use birth control. (2025APP 1495.)

Within a few months of Mikal being pulled from school at age eleven, Shareef was referred for mental health treatment after he jumped in a local, segregated all-white pool.[14] (2025APP 1496.) Law enforcement officers were unable to get him out of the pool, but eventually a local African American leader, George Smith, was called to talk Shareef out of the pool. (2025APP 711-175, 1496.) Mr. Smith recalled Shareef "was in the pool swimming around and cursing, using extremely vile language." (*Id*.) Smith also described how out of control Shareef was after his arrest, throwing the furniture in his jail cell. (2025APP 714.)

Mental health evaluators found that Shareef suffered from a personality disorder and discharged him from mental health treatment and sent him back to jail. (2025APP 1495-1496.) Not long after this, Shareef became so enraged by comments his sister made about his living

[14] Apparently formal segregation had persisted in Lawrenceville even though it was 1995.

circumstances that he smashed her car windows with a cinderblock, resulting in him being sent back to jail yet again. (2025APP 1497-1498.)

4. Mikal was incarcerated as a teen, isolated for hundreds of hours, and essentially never left prison for the remainder of his adolescence.

Around age fourteen, Mikal began to have run-ins with the law for various property crimes. (2025APP 1531, 1579.) He entered the Virginia Juvenile Justice system in December 1997, after Shareef failed to take Mikal to his required court and other program meetings. Mikal was initially in the juvenile prison system for seven to eight months. (*Id.*) A psychologist found that Mikal's problems could be traced back to incompetent parenting, poor guidance, and a dysfunctional family. (2025APP 1585.)

After being released, Mikal wanted to go back to school and straighten his life out. (2025APP 1500.) However, through a number of clerical errors and his father's failure to take him to court dates, Mikal ended up spending the vast majority of the rest of his adolescence in juvenile facilities. (2025APP 1473-1474, 1500-1501.) At one point, when Mikal was fifteen, Shareef even provoked an eight-hour standoff with law enforcement when they came to take Mikal to court for a sentencing hearing. The situation Shareef created was so tense that the police sent an armored truck and tactical team, and it only ended after the sheriff and his team entered the home with a battering ram. (2025APP 1459-1462.) After he was arrested, Mikal said he would "kill a cop before he died," but the Sheriff on the scene believed Mikal only said that because he was influenced by "his father who had no respect for authority and who had begun the standoff that day." (2025APP 1460.)

Mikal was sent back to a juvenile facility where he stayed from ages fifteen to seventeen. (2025APP 1499-1502.) While incarcerated, Mikal continued to suffer from depression. (2025APP 1000, 1006-1009, 1501-1502, 1587-1589.) At one point, Mikal was placed in

protective custody on suicide watch because he was threatening to harm himself. (*Id*.) At another point Mikal said that he wanted to electrocute himself, and at yet another he said he would hang himself with a bedsheet. (2025APP 1588, 1590.)

Several psychologists examined him and noted that Mikal thought everyone was against him and was preoccupied with conspiracy theories (clearly a misguided lesson he learned from his father). (2025APP 1501-1502.) Mikal had suicidal ideations frequently throughout his incarceration and attempted suicide at least once. Evaluators diagnosed him with Major Depression. (2025APP 1502, 1589.)

Throughout his juvenile incarceration, from the ages of 14 to 17, Mikal spent over 1800 hours in solitary confinement. Those 1800 hours included:

- Ten separate instances in which Mikal, as a teenager, was isolated for four or five consecutive days.
- In an additional seven instances, Mikal was isolated for two to three consecutive days at a time.
- The isolation started when Mikal was only 14 years old, and was often imposed for minor transgressions such as refusing to take part in physical training, shouting and cursing, and ripping pages out of a book.

(2025APP 1784-1786.) In total, there were forty separate instances of isolation imposed on Mikal during his adolescence. Of those forty, at least 16 were imposed for merely disruptive, non-assaultive behavior that posed no threat to anyone. Several additional instances of isolation were imposed for relatively minor outbursts, such as destroying property in his cell, throwing a book at an officer, or throwing a shower shoe at an officer. In a school setting, misbehavior like this would get a child sent to detention or the principal's office, and sometimes suspended. Yet Mikal was subjected to one of the most physically and mentally harmful punishments available.[15]

[15] To be sure, on some occasions, isolation was imposed for more serious infractions, such as punching an officer. However, the more serious, anger-driven conduct is better understood in the

As Mikal neared age 18, he was "released without any requirement of aftercare or therapy or group home placement." (2025APP 915.) At 17, Mikal was released from the juvenile institution with the same problems he had at age fourteen, "arguably worsened by the fact that he had been in this institutional setting." (2025APP 917.) Mikal still had severe depression, felt hopeless about his future, and had a worsened paranoia. (*Id.*)

When Mikal was released at 17 years old, he attempted to reunite with his mother, but the reunion did not go well, with his mother showing almost no emotion.[16] (2025APP 1503.) An incident occurred between Mikal and his mother where she wouldn't let him into her house. Mikal became angry and slashed her car tires. When officers arrived to take Mikal into custody, he resisted and reached for an officer's gun. After the situation was under control and Mikal was arrested, he told the officers he wished they would shoot him, which they interpreted as a "death by cop situation." (2025APP 154-160.)

Within five months of being released from the juvenile institution, Mikal pled guilty and was convicted of assault, and was sentenced to 15 years in the Virginia Department of Corrections. (2025APP 1504.) Approximately a year and a half into his sentence, Mikal was transferred to Wallens Ridge State Prison, a supermax prison in the rural southwestern Virginia region of Appalachia with a reputation for brutality and racism. (2025APP 1504-1506.)[17]

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context of the overall harsh treatment that Mikal, a mentally ill teenager, often received for minor transgressions.

[16] Mikal's mother Vera grew up with an alcoholic and verbally abusive father who constantly reminded her that she was not his biological daughter. As a result, Vera became emotionally withdrawn. (2025APP 615-619.)

[17] Following an investigation, in 2001, the Connecticut Commission on Human Rights recommended that the state end its contract for housing Connecticut prisoners at Wallens Ridge, due in part to the Commission's finding of "deeply troubling" incidents of racial harassment and abuse that were corroborated by white inmates who were not targets of the harassment.

Consistent with the documented history of abuse at Wallens Ridge, Mikal reported that he experienced significant mistreatment during his time there. A majority of the inmates were minorities, while the majority of the officers were white. (*Id*.)[18] The atmosphere was charged with racial tension, and officers often used racial slurs and epithets towards the inmates. (*Id*.) Mikal was disciplined several times while at Wallens Ridge for rules infractions and spent a large portion of his time in some form of isolation. (*Id*.) Mikal witnessed horrendous abuse of inmates by officers and was himself tasered by officers and shot with rubber bullets on as many as fifteen occasions. (*Id*.) Officers frequently called Mikal racist names, including "camel monkey" and "towelhead." (*Id*.) On top of this abuse, Wallens Ridge offered no programs for inmates to study or prepare themselves for release from prison. (2025APP 1633.)

Mikal had to endure this brutal environment for several years, living at Wallens Ridge from age 19 until the time of his release at 21. To make matters worse, Mikal was put in solitary confinement for over 6,000 hours—the equivalent of eight months—during his three-year adult incarceration before the capital crime, when he was only 18 to 21 years old. And this time, the amounts of consecutive time that Mikal was isolated were even longer. On one occasion, he was in solitary for 1,700 hours, which is over two months. Another occasion involved 500 straight

(2025APP 1608, 1626-1628.) In 2000, according to news reports (https://tinyurl.com/2wc2ezz2), allegations of physical abuse by New Mexico prisoners at Wallens Ridge prompted the FBI to open an investigation at the request of the New Mexico attorney general. A 2001 report from Amnesty International (https://tinyurl.com/27vc448e), noted the use of stun guns for minor infractions, as well as stripping prisoners to their underwear, putting them in five-point restraints for 48 hours or more, and leaving them to lie in their own waste.

[18] According to a Brennan Center for Justice report (https://tinyurl.com/mthy2r5t) about the 2000 Census and Virginia prisons, at that time, 66% of Virginia's prison population was Black, even though Black citizens comprised only 20% of the general Virginia population. Report at p. 4. In Wise County, where Wallens Ridge is located, the population was about 90% white according to Census data (https://tinyurl.com/ybbdemdp).

hours of isolation, or about three weeks. Mikal had nine additional stints in solitary confinement that lasted between 10 and 15 days each. Many of these instances were for minor, non-violent infractions, such as having an unauthorized radio, not standing up for the prison count, not tucking in his shirt, using vulgar language, or refusing to get a haircut. (APP2025 1787-1788.)

In total, between ages 14 and 21, Mikal spent 86% percent of his time in a juvenile or adult prison. (2025APP 907.) As explained by one of the mental health experts who testified during the PCR hearing, Mikal was released from Wallens Ridge on May 12, 2004, without any of his life-long mental health issues being addressed, as he had "almost no psychological or psychiatric contact during the entire period of time that he's institutionalized." (2025APP 918-919.)

If Mikal's trial sentencing judge had been given the full scope of information about the many harrowing experiences Mikal faced throughout his life, there is more than a reasonable chance that judge would have imposed a life without parole sentence, rather than death. And, as explained in the next section, even more mitigating testimony was available for trial counsel to present, had they only looked.

F. If trial counsel had interviewed readily-available community witnesses, they could have presented a compelling mitigation case that had a reasonable chance of resulting in a life without parole sentence.

Trial counsel's meager presentation of mitigating evidence through a single expert witness could have led the sentencing judge to reasonably conclude that Mikal was so irredeemable that nobody from his life was willing to speak up for him. But the reason Judge Newman did not hear directly from anyone who knew Mikal was not because of Mikal himself. It was because his trial attorneys never did the work necessary to identify the respected community members who wanted to explain the reasons why Mikal's life is worth saving.

1. Myra Ramsey Harris – third-grade teacher.

Myra Ramsey Harris was Mikal's third-grade teacher. (2025APP 647.) Harris was never contacted by trial counsel and, thus, did not testify at Mikal's sentencing hearing, although she was available and willing to do so. (2025APP 658-659.)

Harris did testify at the PCR hearing. There, she explained that when Mikal entered her class, he was at first "withdrawn," but his socialization improved and she "developed a relationship with him where we would sit and talk." (2025APP 650.) Notably, during third grade, Mikal lived with his aunt and uncle in Baltimore and not with his father Shareef. (2025APP 676.) Removed from the harmful effects of Shareef's supervision and assisted by the supportive environment of Harris's classroom, Mikal began to thrive. (2025APP 655.)

In a recent affidavit offered by Ms. Harris, she explained further how Mikal was an affectionate, smart, and talented child who was struggling because of the difficulties in his home life:

> When Mikal first came to my class, he was quiet and withdrawn. He had trouble with change, and seemed to become anxious when he anticipated that something new was happening. Eventually, though, with support and patience, he started to open up. I remember how Mikal would behave and do his work in class so long as I spoke to him calmly. I remember how, in the beginning, Mikal was hesitant to open up and wouldn't hug me back when I hugged him.
>
> Once Mikal got comfortable with me, it became clear that underneath all the trouble he was having because of his home life, he was a normal child with his own unique personality.
>
> For example, Mikal could get easily frustrated about equality and being treated fairly, but would calm down when I gave him a chance to share his thoughts. Eventually, Mikal showed his affectionate side by hugging me back when I hugged him. Mikal was smart and had a great memory. He would quietly observe class. I could tell if he understood what was going on just by looking at him. He would often have a smile on his face when he

> was thinking about something before responding. Mikal was also creative. He enjoyed art, writing, and poetry during his time in my class. I remember in particular how Mikal was unfamiliar with poetry at first, but really grew to like it over the course of that year.

(2025APP 1647.). If she'd only been asked, Ms. Harris could have explained that "[w]ith different and stronger support, I feel sure that Mikal could have stayed true to the quiet, smart, thoughtful third-grader that I got to know." *Id*.

2. Carol Wilson – fifth-grade teacher.

The progress that Mikal made in third grade was lost when family members sent him back to Shareef in Brunswick County, Virginia. Carol Wilson was Mikal's fifth-grade teacher there (2025APP 666), and like Harris, was willing and available to testify at sentencing but was never contacted by the defense team, (2025APP 686-687.)

At the PCR hearing, Wilson provided a grim description of Mikal's condition at the start of that school year, when he was under Shareef's care, testifying that "he scored very . . . significant and excessive self-blame, poor impulse control, and excessive resistance. He has also exhibited periods of extreme sadness at times." (2025APP 672.)

Wilson was a special education teacher who was equipped to give Mikal the assistance that he needed in order to overcome his dysfunctional family situation. (2025APP 667.) Her PCR testimony illustrated how Shareef thwarted her efforts from the start. (2025APP 669-670.) Shareef disrupted the very first school assessment team meeting that was called to determine what special education services Mikal might need:

> When [the school psychologist] read his psychological findings [Shareef] became very angry and [the director of pupil personnel] and [the principal] tried to calm him down because the meeting wasn't even half over and he got up and he cursed us and he left because [the psychologist] is Caucasian and [Shareef] said he didn't want any white man writing any negative reports about his son.

(2025APP 670.)

Wilson further testified that Shareef refused to permit Mikal to receive recommended mental health counseling. (2025APP 678.) She nonetheless recognized that "[Mahdi] had the ability to go ahead and do well, even to excel." (2025APP 681.) However, his profound sadness and depression made it difficult for him to progress. Wilson testified:

> Q When Mikal joined your class do you have any specific memory of what he was like early on?
>
> A Yes. I will never forget him. He did like to draw and he was able to do well, but it came a point of time that I had to sit him next to me in order for him to get his work done. He was never disrespectful. The thing that I noticed about Mikal was that he was depressed and he was very sad.

Id.

That sadness and depression made it difficult for Wilson to help Mikal and, as she testified, her efforts were hampered by Shareef:

> A I just felt that it was very hard for me to approach him. I felt that he did not trust. I wanted to help him as much as I could. See, what made it difficult a little bit, too, is that Mr. Mahdi – Mikal's father – would request to come in and observe my classroom.
>
> Q And what would happen then?
>
> A Then I think that Mikal was sort of tight. I don't know if he was nervous, but that didn't last too long because Ms. Wynn [the principal] did put a stop to it, but I felt he was flat. I felt Mikal – You couldn't get any real like joy out of him, any interest, any motivation. He was just like always to his [sic] self and quiet, little interaction with the other students. He was not a behavior problem. I just had him next to me to keep him on task, but he was never disrespectful or anything like that.
>
> Q So, even though he had come to you having problems in classes, with you he wasn't a behavior problem?

> A No. I think it was the depression that just kept him very low key.

(2025APP 683.)

Mikal made a powerful impression on Wilson. As she explained at the PCR hearing:

> Q How is it that you are able to recall Mikal so clearly after all of these years of students? Did he stand out in some way to you?
>
> A From the time that I started teaching in '84 – and even taught at a prison up through '06 – I will never forget Mikal. He just – I felt that we could have help [sic] him because really and truly Mr. Vecker [the school psychologist] really wanted to help Mikal and I just feel so lost about the fact that it wasn't able to materialize because after Mikal was just I felt he was sort of yanked out of my class by his dad and I would see his dad and his dad would say, Look, I am homeschooling him, you know.

(2025APP 684.) Unfortunately, Mikal never was home-schooled, (2025APP 1459); instead, in Wilson's words, "he just got lost in the cracks." (2025APP 685.)

3. George Smith – community member who knew Mikal's father.

George Smith was a lifelong resident of Brunswick County, Virginia, who could have provided testimony of bizarre and violent behavior by Shareef. (2025APP 711-714.) Smith was willing and available to testify at sentencing, but was never contacted by trial counsel. (2025APP 714.) Because he had known Shareef Mahdi for many years, Smith could have offered both testimony about the father's pathological hatred of white people generally and a specific example of the wild, erratic behavior that resulted from this hatred. (2025APP 709-711.) At the PCR hearing, Smith testified:

> [Shareef Mahdi] hated white people. I mean, he just hated them with a passion, and, you know, I remember once – I watch the military channel sometime. I am not fascinated with Hitler, but I am interested in him, you know, and sometimes I wonder, you

> know, to myself how he led these people to destruction being the kind of person he was and I remember once he [Shareef] told me, when he killed those Jews he knew what he was doing – something to that effect.

(2025APP 709.)

Smith also recounted the incident where he had to assist law enforcement in removing Shareef from a racially-segregated swimming pool where he was causing a disturbance. (2025APP 711-714.) Smith testified that when he arrived on the scene, he saw Shareef:

> He was in the pool swimming around and cursing, using extremely vile language, and I do remember it was in the timeframe of maybe after the O.J. Simpson trial and he was making disparaging remarks about Nicole and why he killed her and cursing and hollering as loud as he possibly could as to try to inflame these policemen that were standing around.

(2025APP 711-712.)

Shareef was arrested and Smith went with him into his jail cell. (2025APP 714.) Smith's testimony about Shareef Mahdi's behavior in that cell vividly illustrated Shareef's crazed and violent nature:

> When we got into the cell he just went wild. He took the furniture and started throwing the chairs against the wall, breaking the tables, not directed at any individual at the time, but it was just wild, you know. I wondered why I had gone in there because I hadn't seen that side of him before, but it was just as violent as anything I have ever seen in my life.

(2025APP 714.)

4. James Woodley – former Sheriff who knew Mikal's father.

James Woodley was the former Sheriff of Brunswick County and a witness for the State at Mikal's sentencing hearing. (2025APP 1458.) At the sentencing, Woodley offered damaging testimony about a "standoff" when Woodley attempted to execute warrants to arrest Mikal and Shareef at their home. (2025APP 124-128.) Woodley testified about officers "putting on their

gear, the bullet proof vests and getting weapons out," (2025APP 127) and engaging in a nine-hour standoff before going into the residence and subduing Mikal and Shareef. *Id.* Woodley also testified that after Mikal was in custody, Mikal said, "I'm going to kill a cop before I die." (2025APP 128.) As a result, the State emphasized Mikal's statement in its closing, (2025APP 478) and the trial judge referenced it in his sentencing order. (2025APP 528.)

Trial counsel could have defused Woodley's harmful testimony but were unable to do so because they failed to interview Woodley before trial (2025APP 1460) and thus did not know what questions to ask him on cross-examination. In an affirmation submitted as part of the PCR hearing, Woodley testified about the additional details that he would have described to trial counsel had they spoken with him. *Id.* Among other things, Woodley's affirmation made clear that Shareef was the architect of the standoff and that the incident ended peacefully, as there were no weapons in the house and no resistance to the officers when they eventually entered the house. (2025APP 1459-1460.)

Had trial counsel interviewed Woodley, they also would have known that Woodley would have testified that Mikal "probably got [his "I'm going to kill a cop before I die" statement] from Shareef, who had no respect for authority and who had begun the standoff that day." *Id.* Instead, trial counsel failed to elicit that explanation on cross-examination, and the trial judge was left with a misleading view of Mikal as a result. That failure alone was deficient performance. *See Rompilla v. Beard*, 545 U.S. 374, 387 n. 7 (2005) (counsel's duties include to develop "evidence to rebut any aggravating evidence that may be introduced by the prosecutor") (internal quotation marks and citations omitted).

Trial counsel's failure to interview Woodley also meant that they were unable to elicit mitigating information from him about Shareef, including evidence of Shareef preventing Mikal

from receiving an education and of violent abuse by Shareef. (2025APP 1459.) With regard to Mikal's education, Woodley would have complemented the testimony of Mikal's teachers. In his affidavit, Woodley testified both that Shareef took Mikal out of school for purported home schooling but did not in fact teach him, and that neither the Brunswick County Department of Social Services nor the School Board ever remedied the situation. (2025APP 1459.) As a result, Mikal "just got lost in the cracks," as Wilson testified, and was left with no education at all. (2025APP 685.)

Woodley also would have offered detailed evidence of violent abuse of family members that Mikal witnessed. For example, in his affidavit, Woodley testified:

> [Shareef] had no respect for women including his mother, Nancy Burwell. I recall an instance when Mrs. Burwell came to me expressing concerns that he was "sick" and saying that he needed help. I suspected at the time that he had been abusive to her and asked her about it. She showed me bruises on her legs and thighs and told me that he had beaten her with the buckle end of a belt while his sons, Saleem and Mikal, [were] watching.

(2025APP 1458.)

Moreover, Woodley would have testified about Mikal witnessing his father, Shareef, kidnap and attempt to kill Vera:

> Around this same time, I learned, mostly directly from Shareef and Mrs. Burwell, that he had kidnapped and beaten his wife after she left him. Shareef took Saleem and Mikal to Petersburg to visit their mother. He used a pretense of taking her and the boys to get ice cream or something, but once she got in the pickup truck Shareef told her he was going to take her back to Lawrenceville and kill her. Once they were back at the house in Brodnax, Shareef and his wife remained outside while the boys went in the house with their grandmother and a female relative visiting from Maryland. Mrs. Burwell, the other woman, and the boys heard screaming and ran outside to see Shareef trying to kill the boys' mother.

(2025APP 1459.)

Such mitigating testimony would have been particularly powerful, as it would have come from a law enforcement officer who was a State witness, rather than someone from Mikal's family or a retained defense expert.

G. Conclusion to the ineffective assistance of counsel claim.

Not long after his release from Wallens Ridge, lacking the support he would need to cope with life after a traumatic upbringing, Mikal committed the crimes that resulted in his death sentence. If trial counsel had not performed in an objectively unreasonable fashion—making virtually no effort to identify non-family witnesses from the community to speak on Mikal's behalf, and failing to have their testifying social history expert thoroughly address Mikal's background—the sentencing judge would have heard Mikal's complete life story. Instead, the judge was given only the most fleeting glimpse at the available mitigating evidence. It is more than reasonable to conclude that this case would have turned out differently in light of the wide range of evidence the sentencing judge never heard.

II. Important new advances in psychology and neuroscience explain the course of Mikal Mahdi's life and the trauma he endured; this critical information is after-discovered evidence that was not available at the time of the 2011 PCR hearing.

A. After-discovered evidence standard.

South Carolina law provides for consideration of after-discovered evidence under Rule 29(b), SCRCrimP. The standard for granting relief on after-discovered evidence claims is that the new information (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. *State v. Spann*, 334 S.C. 618, 619-20, 513 S.E.2d 98,99 (1999). The Court has previously applied this standard in the context of a death-sentenced prisoner facing an execution

date following the conclusion of state and federal habeas review. *South*, 310 S.C. at 507, 427 S.E.2d at 668-69.

When evaluating the prejudice component of this claim, as well as the constitutionally deficient performance of Mahdi's trial counsel, the Court should consider the cumulative effect of the evidence counsel could have but did not present, as well as the additional information outlined below that did not exist at the time of trial. "The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial." *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013). To prevail under a theory of cumulative error, "[a]n appellant must demonstrate more than error in order to qualify for reversal . . . rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground." *Id. See also State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999) (recognizing cumulative error doctrine and compiling cases).

In the years following the 2011 PCR hearing, significant new information has come to light that more fully explains the extent of trauma Mahdi experienced as a child and teenager and the continued development of his brain into his mid-20s.

B. New scientific evidence in mitigation.

1. Adverse childhood experiences.

In 2023, Mahdi was evaluated for the presence and impact of trauma by psychologist Malcolm Woodland, Ph.D., who has over a decade of experience treating and evaluating juveniles involved in the criminal justice system. (2025APP 1649-1672.) Dr. Woodland found:

> Mikal had very few protective factors to shelter him from the trauma and risks that shaped his family and much of his childhood. Mikal's childhood was filled with what medical professionals call ACEs (Adverse Childhood Experiences). ACEs occur during

> childhood and can have deleterious effects on children's development and health well into adulthood. Research (Felitti et al., 1998) indicates that people who experience four or more ACEs are more likely to suffer from depression and PTSD and are 14 times more likely to attempt suicide. One study examining ACEs in over 136,000 adolescents found that every additional ACE exposure increased the risk of violent behavior by 35% to 44% (Duke et al., 2010). With eight ACEs, Mikal is in the .001 percentile, suggesting his childhood was more traumatic and stressful than 99.99% of people's (Garbarino, 2017). Exposure to one ACE can diminish health in adulthood. However, exposure to the trauma associated with eight ACES is almost unheard of and, without protective factors, can lead to the most tragic outcomes.

(2025APP 1661.)

It is worth emphasizing Dr. Woodland's dramatic finding that Mikal's childhood was more traumatic than 99.99% of the population. Dr. Woodland also explained the "conclusive" scientific literature that now shows that exposure to four or more ACEs, let alone the eight that Mikal endured, "leads to increased involvement in violence, mental illness, a greater likelihood of suicide, and early death." (2025APP 1667.) Because research on ACEs did not become widely known until about 2015, (2025APP 1666.), this information was not available for presentation at Mikal's trial nor at his post-conviction hearing.

2. Effects of solitary confinement on teenagers.

Dr. Woodland also discusses the hundreds of hours of isolation that Mikal was subjected to as a teenager in juvenile and adult prisons: Mikal's trauma "worsened in detention, where he was subjected to brutal physical takedowns and lengthy periods of isolation." (2025APP 1650.)

Craig Haney, Ph.D., J.D.—a scholar in the areas of law and psychology, and particularly the psychological effects of imprisonment—has provided a report discussing newly available information about the harmful effects of solitary confinement on teenagers whose brains are still developing. (2025APP 1673-1726.) Dr. Haney concludes:

> It is my expert opinion that the nature and effect of the severely deprived institutional conditions under which Mikal Mahdi was confined, including periods in which he was housed in solitary confinement, that he experienced both in juvenile and adult institutions, are likely to have severely and adversely affected him . . . . Similarly, the fact that his capital crime occurred when Mikal Mahdi was at an age (barely having turned 21 years-old) that we now recognize as neuro- and social-developmentally immature . . . . render[ed] him more vulnerable to the harmful effects of the institutionalization and solitary confinement to which he was subjected in juvenile and adult institutions.

(2025APP 1678-1679.)

Dr. Haney explains how it was not known until after the 2011 PCR hearing, in which he testified, that there are deleterious physical, medical, and neurological effects from living through solitary confinement such as higher suicide rates, higher drug overdose rates, and neurological changes in brain structure. (2025APP 1696-1699.) It was not known until after 2011 that the effects of solitary confinement are long-lasting and include persistent mental health symptoms, recidivism, and poor post-prison social adjustment. (2025APP 1700-1705.) It was not known until after his PCR hearing that Mahdi was particularly susceptible to the harmful effects of solitary confinement because he endured it during his adolescence, a critical period in his brain's development. (2025APP 1718-1725.) It was only after Mahdi's 2011 PCR hearing that legal, mental health, human rights, and even correctional organizations reached a consensus against the use of solitary confinement on vulnerable populations because of its harmfulness. (2025APP 1712-1718.)[19]

[19] Dr. Haney provided brief testimony about solitary confinement during the 2011 PCR hearing but did not address, because it did not exist at the time, the new information concerning solitary confinement's deleterious physical manifestations. Even more important, Dr. Haney did not address the harmful effect of prison isolation on juveniles with developing brains. (2025APP 21-926.)

In fact, in 2020, South Carolina corrections officials recognized the weight of this evidence and took steps toward reducing the use of solitary confinement in juvenile correctional settings. In a federal grant application submitted by the S.C. Department of Juvenile Justice to obtain funding for initiatives to reduce the use of isolation in juvenile facilities, South Carolina officials agreed that there is new information that should prompt a reexamination of the effect of solitary confinement on children such as Mikal:

> While mental health professionals agree that isolation is psychologically damaging for adults . . . adolescents are at increased risk for the negative outcomes of isolation due to their distinctive developmental needs. As the adolescent brain is still developing, isolation can hinder this process resulting in much more significant mental/emotional harm. Additionally, adolescents experience the aspect of time differently than do adults, meaning that even short stays in isolation can be more damaging than a similar experience in an adult . . . . [S]ince many youth enter juvenile justice systems with histories of substance abuse, mental illness, and complex trauma, isolation can exacerbate these issues since they are often not treated properly in isolation settings.

(2025APP 1755.) The S.C. DJJ officials continue, in their grant application, to acknowledge the relatively recent vintage of these insights: "As a result of the body of research highlighting the concerns related to the use of isolation, the practice has risen to the attention of legislators and policy developers as a matter for legal intervention." *Id.*

Similarly, in 2014, following a trial addressing the inadequacy of mental health services provided by the S.C. Department of Corrections, The Honorable J. Michael Baxley, S.C. Circuit Court Judge, found that solitary confinement is a harmful practice, especially when used on prisoners like Mahdi who have mental illness:

> [S]eriously mentally ill inmates are exposed to a disproportionate use of force and segregation (solitary confinement) when compared with non-mentally ill inmates. Segregation and use of force are often used in lieu of treatment, with severe consequences for inmates with serious mental illness. The inappropriate and

> extended reliance on segregation to manage inmates with serious mental illness, particularly those in crisis, exposes them to a substantial risk of serious harm by limiting their access to mental health counselors and psychiatrists, disturbing their eating and sleeping cycles, disrupting the administration of medications, and deepening their mental illnesses. These conditions have contributed to the deaths of multiple inmates in segregation, while placing other inmates and staff at risk. They have also led to the stigmatization of mental illness within SCDC that discourages inmates from seeking the limited mental health care the agency does provide.

T.R. v. S.C. Dept. of Corrections, C/A No. 2005-CP-40-2925 (Order Granting Judgment in Favor of Plaintiffs, entered Jan. 8, 2014).[20]

Virginia, where Mahdi was incarcerated as a teenager, recently reached the same conclusion about the need to reduce reliance on isolation in juvenile correctional settings. Beginning in 2015, the Virginia Dept. of Juvenile Justice established a goal to "[d]ramatically reduc[e] the use of isolation and staff restraints in the [juvenile correctional centers], while at the same time reducing the incidents of aggression by committed youth." The Bon Air facility, where Mikal spent time in 1997 at age 14, by 2015 had set a goal to "work[ ] intently to reduce the use of punitive isolation" in order to treat children in a way that "aligned with best practices in addressing trauma."[21]

It would be arbitrary to execute Mikal Mahdi before first considering that a major portion of his adolescence was spent in a correctional setting that today is almost universally rejected as harmful and excessively harsh for children.

[20] Judge Baxley's order is available online: https://tinyurl.com/4m2nanwm.

[21] Virginia Dept. of Juvenile Justice, Transformation Plan 2018 Update, pp. v, 10. Available online at https://tinyurl.com/3e42j5pp.

3. Unconscious racial bias in youth prisons.

As already described, beginning at age 14, Mikal entered the juvenile justice system for committing property crimes. Between the ages of 14 to 21, Mikal would spend well over 86% of his life in juvenile and adult prisons. During this period, suffering from depression and trauma, Mikal committed disciplinary infractions resulting in isolation and other forms of harsh discipline. This acting out by Mikal was not surprising given the close psychological association between trauma, depression, and emotional dysregulation. (2025APP 1661.)

Dr. Woodland found these experiences diagnostically important, noting Mikal's "trauma . . . worsened in detention, where he was subjected to brutal physical takedowns and lengthy periods of isolation." (2025APP 1650.) Dr. Woodland explains that a misdiagnosis of conduct disorder "allowed [Mikal's] PTSD, depression, suicidality, and emotional dysregulation to fester, causing mounting anger and leaving him and those around him in the worst predicaments." *Id.* While in juvenile prisons, Dr. Woodland notes, rather than emphasizing therapy, Mikal's "transgressions were often met with forceful and severe punishments . . . ." (2025APP 1656.)

Dr. Woodland explains that new research about unconscious bias reveals the likely reasons why Mikal's mental health conditions were neglected in the juvenile prison setting:

> Seminal work suggests that bias is often unintentional and occurs outside of an individual's awareness, also known as unconscious bias. Research has demonstrated that biased thoughts, feelings, and behaviors toward African Americans and other ethnic and racial minorities can emanate from pejorative stereotypes that are activated unconsciously, even among clinicians whose values strongly oppose bias.
>
> Unconscious bias played a significant role in Mikal's misdiagnosis. Despite his early diagnosis of depression, when he became an adolescent, the stereotypes about the anger, behavior, dysfunctional African American families, and aggression of Black men became more prevalent in his diagnosis. Indeed, the psychological evaluation that has guided his treatment, or lack

> thereof, from 14 years old to today, did not use prior reports, or collateral sources such as interviews with former teachers or family outside of Shareef to arrive at a diagnosis, leaving a gaping diagnostic hole for bias to fill. At nine and ten years old, his depression, sadness, and exposure to trauma were treatment concerns. By 14, the only treatment concern was his behavior, "poor parenting and a dysfunctional family;" all other symptoms were left unacknowledged and untreated.

(2025APP 1665-1666.)

Dr. Woodland explains how, "[w]ithin the last decade, psychological research has documented how as young men of color age into adolescence and early adulthood, they are more likely to receive behavioral diagnoses such as conduct disorder when suffering from trauma or other psychiatric disorders." *Id.* In this case, this phenomenon can be seen most starkly in a juvenile prison record when Mikal was still just 14 years old, describing him as a "professional criminal" at the same time that he was middle school age. (2025APP 1656.) This new context about unconscious bias is critical to understanding the trajectory of Mikal's life, since so many of his formative years were spent in prison settings.

4. Intergenerational trauma.

Dr. Woodland's review of Mahdi's family history found multiple instances of trauma throughout the family tree. (2025APP 1651-1653.) The history passed down from Mahdi's paternal family, the Burwells, is that his ancestors were enslaved in Virginia, and the African American descendants in the family originated from a sexual assault by the slave owner, Nathan Burwell. In a subsequent generation, Mahdi's great-great grandmother was a white woman who had to flee Virginia after the African American man she had a relationship with was lynched for his consensual sexual relationship with her. Mahdi's grandmother Nancy Burwell also reported that she was abused and raped within her own marriage by her much older husband who was essentially forced to marry her to maintain his employment as a college professor. Mikal's father

Shareef reported difficult experiences with racism when integrating all-white Virginia schools as a child.

As discussed by Dr. Woodland, trauma was present in Mikal's maternal family as well. Mikal's maternal grandfather George Artis was an alcoholic who abused his wife. Artis believed that his daughter Vera (who would later become Mikal's mother) was conceived when his wife had an affair. Artis verbally abused Vera by telling her in front of the family that she was not his child. Growing up, Vera was depressed and spent much of her childhood isolated in her room. Eventually Vera's mother fled her abusive husband, moving to Virginia and joining the Nation of Islam. It was there they met Shareef Mahdi. Even though Shareef was ten years older than the 16-year-old Vera, they were married through an arrangement between Shareef and Vera's mother. The abuse began early on in Shareef and Vera's marriage, with Vera later telling her sister that her first child, Mikal's older brother Saleem, was conceived when Shareef raped her.

While this information was available at the time of the 2011 PCR hearing, the medical context explaining its significance was not. Sarah Vinson, M.D., is a child and adolescent psychiatrist who has experience in the juvenile justice setting, and has specialized experience with intergenerational and racial trauma. (2025APP 1728.) Dr. Vinson explains that only general concepts and theories about racial and intergenerational trauma existed in 2011. More recently, a body of physiological and quantitative evidence has accrued which demonstrates the measurable effects of intergenerational trauma on both mental and physical health. (2025APP 1734.) This includes:

- Trauma and PTSD are linked to stress biomarkers in the body, such as elevated glucocorticoids, C-reactive proteins, proinflammatory cytokines, and neuroendocrine risk indicators.

- As shown through studies of Holocaust survivors and their children, higher rates of post-traumatic stress, anxiety, and depression are seen in ancestors of Holocaust survivors.

- Those who directly experience racism and racial trauma show similarly higher rates of harmful biological impacts on the body, as well as cognitive and mental health difficulties. "Repeated evidence suggests increased trauma symptomology in individuals who . . . experience racial discrimination."

- Directly experiencing racism results in even more harmful developmental effects on young people, for example, higher cortisol levels and blood pressure, and higher rates of traumatic stress.

- Intergenerational experiences with racism result in adverse outcomes that are similar to those seen in the descendants of Holocaust survivors, including biological predisposition toward anxiety, depression, and PTSD symptoms.

(2025APP 1730-1732.)

Dr. Woodland adds that published studies show "increases in PTSD, depression, and other physical and psychological sequelae in the offspring of families' parents who have suffered trauma." (2025APP 1667.) After evaluating Mahdi, Dr. Woodland concluded that Mahdi "felt the effects of this intergenerational trauma" through his family's, and particularly his parents', incredibly difficult life experiences. (2025APP 1650.) All of this is new information that should be taken into account and fully explored before Mahdi's execution can proceed.[22]

[22] During federal habeas review, Mahdi attempted to retain an expert to develop evidence relating to "the intersection of race and trauma" in Mahdi's family, and the impact of "traumatic events and stress factors on Mr. Mahdi in the context of his unique ancestry . . . . *Mahdi*, 20 F.4th at 882-84. However, the district court denied the funding needed to develop this evidence and the Fourth Circuit affirmed on appeal. *Id.* at 887-91. Judge Gregory dissented on the ground that the district court denied funding based on the wrong legal standard. *Id.* at 909. The funding for Drs. Vinson and Woodland only became available after federal habeas concluded, when federal defenders from the Capital Habeas Unit for the Fourth Circuit were appointed to represent Mahdi in his remaining litigation and clemency proceedings.

5. Adolescent brain development.

A key feature of this case is that Mahdi's capital crime occurred when he was only 21 years old, a time of life when the brain is still developing. From an extremely young age and continuing through his adolescence, Mahdi experienced consistent trauma, beginning with his abusive and mentally ill father and later in the harsh conditions of juvenile incarceration, including solitary confinement. While the PCR court heard testimony about Mahdi's turbulent upbringing and psychological background, no evidence was presented about the science of the developing brain. And there is important new information in this field that was not available in 2011 and warrants close review.

Elizabeth Cauffman, Ph.D., an expert in developmental psychology, explains that "advances in science [since 2011] have continued, and have significantly added to, deepened, and confirmed what we know about the ways in which the human brain, and its capacity for decision-making, is not fully developed until the mid 20s." (2025APP 1739.) There is important new evidence confirming that the adolescent period involves high rates of risk-taking and impulsive behavior, and that this is linked with neurological and hormonal age-related features. (2025APP 1739-1740.) A major new study from 2013 demonstrated that the vast majority of adolescents stop committing crimes by age 25, which can be explained in part by improvements in psychosocial maturity. (2025APP 1740-1741.) Perhaps most significantly for Mahdi, new research establishes that adolescents are particularly susceptible to harm from incarceration. When compared with children diverted from the juvenile prison system, those incarcerated experience higher rates of re-arrest and subsequent violent offenses, and lower rates of school, social, and economic success. This new research even shows that children who are subject to

harsher prison environments, such as "secure confinement," tend to have more impaired psychosocial development as they enter adulthood. (2025APP 1741-1743.)

Psychiatrist Donna Maddox, M.D., who evaluated Mahdi during PCR and again in 2024, agrees that new research about adolescent brain development is key to understanding Mahdi's mitigating circumstances:

> Mr. Mahdi did not have complete brain development at the time of his capital offense. He was 21 years old at the time. The prefrontal cortex which is responsible for executive functions does not mature until the mid to late 20s. Brain maturation during adolescence is influenced by heredity, environment, and hormones. Teen brains have less white matter (myelin) in the frontal lobes compared to adults. Myelin allows for better flow of information between brain regions. The prefrontal cortex regulates behavioral responses. *See* Maturation of the adolescent brain, Neuropsychiatric Disease and Treatment 2013; 9: 449-61. ncbi.nlm.nih.gov. The Honorable Clifton Newman noted in the trial sentencing memorandum that he did not consider Mikal's age as mitigating because he had an average IQ and a prior legal history. Research shows that stress exposure impairs prefrontal cortex functioning.

(2025APP 1748.)

This new information is critical to understanding the trajectory of Mahdi's life, since virtually his entire adolescence was spent in juvenile prisons.

CONCLUSION

Because so much of the scientific, medical, and psychological context for understanding the scale of trauma that Mikal Mahdi endured during his childhood and teen years was not available at the time of his trial or PCR proceeding, it would be fundamentally unfair and unconstitutional to execute him without first giving this information full consideration. The risk of an unconstitutional execution is compounded by the fact that Mahdi's trial was a one-sided

affair with defense "advocacy" that didn't even span the length of a Law & Order episode, and was just as superficial.

In light of the cumulative impact of the new evidence and constitutional violations that should shock our universal sense of justice, the Court should vacate Mikal Mahdi's death sentence. In the alternative, the Court should stay the execution and remand for an evidentiary hearing to address the full scope of mitigating evidence. That evidence will show that Mikal Mahdi is not an irredeemable person who deserves to be executed, but one who started out as a promising child before extraordinary trauma knocked him far off course. When Judge Newman first determined the sentence at trial, he was given virtually no reason to believe that Mahdi had a "sense of humanity." We now know that Judge Newman simply did not have access to the information needed to reach a reliable sentencing decision. At the very least, a basic sense of justice and fairness calls for this new information to be fully heard before Mr. Mahdi is put to death.

Respectfully submitted on March 18, 2025.

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